

JAN 28 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAVIER AVALOS,

Plaintiff - Appellant,

v.

JAMES W. NIELSEN; et al.,

Defendants - Appellees.

No. 06-16915

D.C. No. CV-05-03830-MMC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Maxine M. Chesney, District Judge, Presiding

Submitted January 14, 2008^{**}

Before: HALL, O'SCANNLAIN and PAEZ, Circuit Judges.

California state prisoner Javier Avalos appeals pro se from the district court's judgment in his 42 U.S.C. § 1983 action alleging that prison officials violated due process by denying his request for a transfer to a Mexican prison. We

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Morrison v. Hall*, 261 F.3d 896, 900 (9th Cir. 2001) (summary judgment); *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (failure to state a claim under 28 U.S.C. § 1915A), and we affirm.

The district court properly dismissed Avalos' equal protection claim because he failed to allege facts showing that prisoners seeking transfers to Mexico are similarly situated to prisoners seeking transfers to European countries. *See Thornton v. City of St. Helens*, 425 F.3d 1158, 1168 (9th Cir. 2005) ("Different treatment of unlike groups does not support an equal protection claim.").

The district court properly granted summary judgment on Avalos' due process claim because Avalos did not raise a triable issue as to whether Mexico had any intention of accepting Avalos as a transferee. *See* Cal. Code Regs. tit. 15 § 2870(a) (2005) (requiring prisoner to "request that the receiving nation submit a letter directly to the Chairman stating an intention to accept the transferred prisoner and indicating the receiving nation's intentions regarding the incarceration of the prisoner.").

Avalos' remaining contentions are unpersuasive, and his request for an evidentiary hearing is denied.

AFFIRMED.